

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

CIVIL REVISION APPLICATION NO 1136 OF 1991

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the Order ?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Order ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

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CHIMANBHAI KHODIDAS PATEL  
VERSUS  
PALLAVIBEN RAJENDRAKUMAR PATEL  
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Appearance:

MR CK PATEL Petitioner present in person  
MR AS TRIVEDI for the Respondent  
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CORAM : MR JUSTICE S.K. KESHOTE  
Date of Order : 27/04/2000

C A V JUDGMENT

#. The order which is subject matter of the challenge in

this Civil Revision Application is dated 30/8/1991 of City Civil Judge, Ahmedabad in Misc. Civil Application No.842 of 1989. This Misc. Civil Application was came to be rejected under the said order. The Misc. Civil Application has been filed by the petitioner for restoration of the suit filed by him as an indigent person, which has been dismissed for default on 19/9/86. As this Misc. Civil Application was barred by limitation, the prayer has been made for condonation of delay also. The court has not considered it to be a fit case to condone the delay and as a result of which application was rejected hence this revision application.

#. In the application for condonation of delay the applicant has given out explanation for this inordinate delay in filing of the application for restoration, which is to be briefly stated.

#. The suit, as indigent person, has been filed for the possession and the cancellation of sale deed of the disputed house, which is situated in village Vadaj, Ahmedabad S.No. T.P.Scheme No.29's final Plot No.130 located in Ankur Society Vibhag No.I, Bungalow No.3. This bungalow was sold by registered sale deed dated 26/5/1993 by the respondent No.3 in favour of the respondent Nos. 1 and 2. The respondent No.3 admittedly was the wife of the petitioner though subsequently what it is given out that their marriage was dissolved under a decree of divorce. In the application it is stated that many facts were not given. The facts which are given by the petitioner during the course of arguments, are also to be stated.

#. On 29/11/1986 the petitioner filed Civil Suit No.774 of 1986 in the name of his minor son for the identical relief. That suit was withdrawn on 30/11/1989 and then application for restoration of the suit was filed on 29/11/1989. The petitioner submitted that on 4/10/90 he filed the Civil Suit No.4839 of 1990 for the injunction in respect of this very property which is pending. The suit aforesaid has been filed by the petitioner on the day on which his application for restoration for his earlier suit dismissed for non-prosecution was also pending. The petitioner has given out that he was involved in murder case, then he involved in family and service dispute and he could not take steps for restoration of the suit. It is stated he was under a bona fide belief that it is not now necessary to proceed with his own suit and, therefore, he did not take any steps for restoration of the suit and the application. It is urged that later on he felt that it is necessary to

take steps for the restoration of the suit. So, on account of helplessness and ignorances the application for restoration of the suit was not filed in the court. At the outset it is to be stated that the petitioner is a practicing advocate. In this factual background the prayer made for the condonation of delay of 3 years 1 month and 8 days in filing of this application for restoration is to be considered.

#. The respondent Nos. 1 and 2 on the other hand come up with the case that they are the bona fide purchasers of the suit property. Before purchasing this property they have taken all the care and caution and then only they have purchased this property. It is stated that they have ascertained regarding title of the respondent No.3 of this property from the society concerned. Before entering into this sale transaction they have taken the title clearance certificate from M/s. Bhaishankar Kanga and Girdharlal, Solicitors. Not only this they have also given a public notice in the newspaper Jansatta on 20/1/1983. The petitioner has not raised any objection against the said deed. Now he is making all efforts to harass the respondents. In furtherance of this object what the respondent No.1 wants to state that, the petitioner involved the respondents in manifold civil and criminal litigations.

#. The petitioner contended that the learned court below has committed material irregularity in exercise of its jurisdiction in not condoning the delay in filing of the restoration application. It has next been contended that the petitioner has made out a sufficient cause for his absence on the day on which the application was dismissed for default. The petitioner involved in criminal case and he could not prosecute his suit. Lastly it is contended that the respondent No.3 has no right, title or interest in property and in collusion with the respondent Nos. 1 and 2 this sale deed has been effected. The property belongs to the petitioner. Concluding his submissions it is contended that in case this suit is not restored the petitioner will be deprived of his property.

#. The learned counsel for the respondent Nos. 1 and 2 relying on catena of decisions of apex court as well as this court contended that this application filed by the petitioner for condonation of delay is wholly malafide application. It is contended that the petitioner was not interested to prosecute his suit otherwise he has ample opportunity to file the application for restoration thereof at an early date. He knew very well about dismissal of his suit. He would have really been

interested to prosecute his suit instead of filing the suit for his minor children he could have got his suit restored. In this respect, the reference has been made to the fact that the suit has been dismissed for default on 19/9/1986 and on 29/11/86 the petitioner has filed the suit No.774 of 1986 for his minor sons. It has next been contended that in the application the petitioner has not given out all the material facts and details. Only bald and vague statements have been made on the basis of which no relief could have been granted to the petitioner and rightly it is not granted. Lastly it is contended that it is within the discretion of the court to condone or may not condone the delay. It does not relate to the exercise of jurisdiction by the trial court and this revision application is not maintainable. Concluding his submissions, Shri Trivedi submits that the respondent Nos. 1 and 2 are the bona fide purchasers of the suit bungalow. They have ascertained about the title of the respondent No.3 of bungalow and only thereafter they have entered into this sale transaction. They got the title clearance certificate from Solicitor and after public notice they purchased this property. To blackmail the respondent Nos. 1 and 2 and to extract money from them, the petitioner who is an advocate filed many frivolous and baseless civil and criminal litigations against them.

#. I have given my thoughtful considerations to the submissions made by the learned counsel for the parties.

#. Section 5 of the Limitation Act empowers the court to condone the delay, which is there in filing of the proceedings. But it is a discretionary matter. In case the court is satisfied on the material produced that the litigant has been prevented from filing of the proceedings within the limitation by sufficient cause then only the delay can be condoned but not as a rule or right. Heavy burden lies upon the litigant who is praying for condonation of delay to make out a case for condonation of delay to the satisfaction of the court. In the case in hand there is a delay of 3 years 1 month and 18 days in filing of the application for setting aside of the order of the court below dismissing the suit of the petitioner for nonprosecution. The matter has to be considered with reference to the status of the petitioner. The petitioner is a practicing advocate. He is a highly qualified person. Prior to entering into the profession, he was a teacher (professor) in the College. The petitioner immediately after dismissal of his suit for nonprosecution filed a suit for this very property in the name of his minor sons. Then at later point of time that suit has been withdrawn and he has filed this

application. Not only this he has filed another suit, in his own name which is pending. The fact that the petitioner filed the suit for his minor son for this property after dismissal of his suit for nonprosecution, whatever explanation given by him for this inordinate delay of more than 3 years in filing of this application is wholly concocted and manufactured. The reasons given, if would have been correct, he fails to give any explanation for his act to file suit for his minor sons for this property in dispute. The explanation furnished for this inordinate delay, in these facts and circumstances cannot be accepted and rightly the same is not accepted. The petitioner was knowing fully well of the fact of the dismissal of his suit but still instead of filing an application for its restoration he has switched on to another remedy of a suit filed by him for his minor sons. The petitioner was not interested to prosecute his own suit. Reasons and grounds given for condonation of this delay would have been equally hurdle for him to file the fresh suit. This application of the petitioner is not bona fide. I find substance in the contention of Mr.Trivedi that the petitioner is making all efforts to harass the respondent Nos. 1 and 2 who have purchased this property after taking all due care and precaution. The respondent Nos. 1 and 2 prima facie appear to be bona fide purchasers of the suit property. They have taken a title clearance certificate from the Solicitor. They have also given a public notice and thereafter they purchased this property. This property has been purchased by them way back in the year 1983 and in one or other way the petitioner is keeping the respondents involved in the litigations. Both civil and criminal cases were filed against these persons by the petitioner. This conduct of the petitioner, who is an advocate also difficult to appreciate. Being an advocate, he is expected to know the law and if he would have been really interested to proceed with his suit he has ample opportunity and time to take appropriate action by filing application for restoration of the suit, which was dismissed for default within limitation. This case does not fall under any of the clauses (a), (b) and (c) of Subsection (1) of Section 115 of the Code of Civil Procedure, 1908. In the facts of this case, the learned trial court is correct in its approach that the petitioner has failed to furnish a reasonable, satisfactory or even a proper explanation for seeking condonation of inordinate delay in filing of the application for restoration of the suit.

##. It is a case where there is a deliberate inaction on the part of the petitioner not to file this application

within limitation. Not only this but this application also lacks bona fides. By the expiration of limitation a valuable right accrued to the other side. In the matter of condonation of delay the litigant who prays for the same is not only the concerned person but the court has also to take into consideration the rights which would have accrued to the other side. The court has also to keep in mind two important aspects that it is a discretion of the court to condone or may not condone the delay and secondly the application is a bona fide application. Further to see that the litigant concerned come up before it with clean hands and there is no deliberate inaction on his part to take proper remedy in time. Here in the facts and circumstances of the case, which are not disputed by the petitioner, this application of his was not a bona fide application and further he has not come up before this court with clean hands. His attempt is only to keep the respondent Nos. 1 and 2 involved in litigation so that he may be in a position to blackmail them. After hearing the petitioner I am satisfied that it is a case where he is making all efforts to extract some money from respondent Nos. 1 and 2.

In the result, this Civil Revision Application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this court stands vacated. However, in the facts of this case, no order as to costs.

(S.K.Keshote, J.)

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